



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

IN THE MATTER OF:

Mettler Valley Mutual Water Company
Public Water System,

Respondent.

California PWS ID No. CA1900100

Proceedings pursuant to Sections 1414(g) of the Safe
Drinking Water Act, 42 U.S.C. § 300g-3(g).

Docket No. PWS-AOC-2019-6002

**ADMINISTRATIVE ORDER
ON CONSENT**

I. INTRODUCTION

1. The United States Environmental Protection Agency, Region IX (EPA) and Mettler Valley Mutual Water Company ("Respondent"), as the owner and/or operator of the Mettler Valley Mutual Water Company public water system (the "System"), enter into this Administrative Order on Consent ("Consent Order") for the purpose of bringing Respondent's System located at 28115 West Avenue C-6, Lancaster, CA 93536 and referred to as PWS ID No. CA1900100 into compliance with the requirements of the federal Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f *et seq.*, and its National Primary Drinking Water Regulations (NPDWRs), 40 C.F.R. Part 141.

2. EPA and Respondent recognize that this Consent Order was negotiated and entered into in good faith.

II. JURISDICTION

3. EPA enters into and issues this Consent Order under the authority vested in the EPA Administrator by Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), which in turn has been delegated to the Director of EPA Region IX's Enforcement and Compliance Assurance Division.

4. EPA and Respondent enter into this Consent Order voluntarily. Respondent agrees not to contest EPA's authority or jurisdiction to issue this Consent Order in this or in any subsequent proceeding to enforce the terms of this Consent Order. This Consent Order constitutes an enforceable agreement between Respondent and EPA.

5. The State of California ("State") has primary enforcement responsibility for public water systems in the State and EPA has notified the State of this enforcement action in accordance with Sections 1414(a) and (g) of the SDWA, 42 U.S.C. §§ 300g-3(a) and (g).

III. DEFINITIONS

6. "Consent Order" shall mean this document, all attachments hereto, all subsequent modifications, and all submissions required by this Consent Order and approved by EPA.

7. "Day" shall mean a calendar day unless otherwise specified. In computing a prescribed period of time, the day of the event shall not be included. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

8. "Maximum Contaminant Level" ("MCL") shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, as further defined at 40 C.F.R. § 141.2.

IV. EPA FINDINGS OF FACTS AND CONCLUSIONS OF LAW

EPA makes the following Findings of Facts and Conclusions of Law:

9. Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2 and a "supplier of water" as that term is defined in Section 1401(5) of the SDWA and 40 C.F.R. § 141.2.

10. Respondent's System provides daily water service to approximately 99 service connections or 130 residents in the City of Lancaster, County of Los Angeles, State of California. Respondent has a physical mailing address at 25737 West Avenue B, Lancaster, CA 93536.

11. The System provides water for human consumption through pipes and has at least 15 service connections and therefore meets the definition of a “public water system” in Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4).

12. The System serves at least 25 year-round residents and thus qualifies as a “community water system” (“CWS”) within the definition in Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15), and 40 C.F.R. § 141.2.

13. The System’s source of drinking water is groundwater from one well that hereinafter will be referred to as “Well 01.”

14. Respondent owns and operates the System and thus, as a “supplier of water,” must generally comply with the requirements of Part B of the SDWA, 42 U.S.C. § 300g *et seq.*, and its NPDWRs, which include the MCLs for contaminants set forth at 40 C.F.R. § 141.62.

15. The MCL for arsenic set forth at 40 C.F.R. § 141.62(b) is 0.010 milligrams per liter (mg/L) (or 10 micrograms per liter (ug/L)).

16. The State, acting through its California State Water Resources Control Board – Division of Drinking Water (SWRCB), has primary enforcement responsibility under Section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), to ensure that public water systems in California comply with the applicable requirements of the SDWA.

17. SWRCB has delegated to Los Angeles County Department of Public Health (“LA County”), primary enforcement responsibility under Section 116330 of the California Health and Safety Code, Division 104, Part 12, Chapter 4, California SDWA, to ensure that suppliers of potable water with service connections 199 or fewer within LA County comply with the requirements of the SDWA. LA County has primacy for many, but not all, of the public water systems in LA County. Those public water systems not under the jurisdiction of LA County remain under the jurisdiction of SWRCB. Respondent’s System located within the exterior boundaries of Los Angeles County, California has approximately 99 service connections. Therefore, the System is under the jurisdiction of LA County. However, SWRCB

retains oversight enforcement authority over all public water systems in California regardless of local primacy delegation.

18. On April 30, 2018, SWRCB requested that EPA pursue enforcement against Respondent of the SDWA violations described below.

19. On December 11, 2018, pursuant to Section 1414(a)(1) of the SDWA, 42 U.S.C. § 300g-3(a)(1), EPA issued a Notice of Violation to Respondent of the following violations:

Violations of Arsenic MCL

20. Pursuant to 40 C.F.R. § 141.23(i)(1), compliance at a public water system conducting arsenic monitoring at a frequency greater than annually is determined by the running annual average (RAA). If the RAA for any sampling point is greater than the MCL, then the system is out of compliance; if any one sample would cause the MCL to be exceeded on an RAA, then the system is out of compliance immediately. If a system fails to collect the required number of samples, compliance is determined based on the total number of samples actually collected.

21. Respondent's System has been out of compliance with the arsenic MCL of 10 ug/L since January 23, 2006. Within the last 5 years, the System has remained out of compliance based on the analytical results of Respondent's arsenic sampling at the System's sampling point at Well 01, as set forth in the table below:

WELL 01

Year	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter 1 st	Running Annual Average (ug/L)
2019	18	-	-	-	15.3
2018	16	14	15	14	14.8
2017	15	15	15	15	15
2016	14	14	13	14	13.8
2015	13	13	12	13	12.8

V. COMPLIANCE PROVISIONS

Based on the foregoing findings and pursuant to its authority under Section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g), Respondent agrees and is hereby ORDERED to conduct the following activities:

22. **Letter of Intent**: No later than fifteen (15) days from this Consent Order's Effective Date, Respondent shall transmit to EPA a letter summarizing any steps already taken by Respondent to comply with this Consent Order, the SDWA, and its implementing regulations at 40 C.F.R. Part 141, *i.e.*, the NPDWRs.

23. **Arsenic Compliance Plan**: Within ninety (90) days from this Consent Order's Effective Date, Respondent shall submit to EPA, at the address provided below, a draft written plan (the "Arsenic Compliance Plan") for EPA's approval that describes in detail the steps Respondent will follow to remedy the arsenic violations noted above. The Arsenic Compliance Plan shall become an enforceable part of this Consent Order upon approval by EPA. At a minimum, the plan shall include the following elements:

- a. A description of funding sources that Respondent will access or apply for to comply with the arsenic MCL, including but not limited to, accessing personal or private funding or drinking water state revolving fund or state proposition funding.
- b. Identification of a water operator for the System who possesses operator certification credentials and who has the appropriate training to make operational decisions and an understanding of the rules and regulations of the SDWA necessary to maintain compliance;
- c. A description of the planning and/or construction milestones necessary for completing steps to ensure the timeliness and accountability of the selected compliance measures (e.g., milestones for drilling new well(s), well rehabilitation, installing arsenic treatment or public water system consolidation efforts, to name a few options) and
- d. A description of how Respondent will provide adequate alternative water to customers by September 15, 2019 until the System achieves compliance with the arsenic MCL.

24. Upon receipt of the draft Arsenic Compliance Plan, EPA will (i) approve the draft Arsenic Compliance Plan; (ii) approve the draft Arsenic Compliance Plan upon specified conditions; (iii) approve in part the draft Arsenic Compliance Plan and disapprove the remainder; or (iv) disapprove the draft Arsenic Compliance Plan. If EPA disapproves all or part of the draft Arsenic Compliance Plan, it will provide written comments to Respondent explaining the reason(s) for its disapproval and identifying necessary modifications to the plan. Respondent shall, within fifteen (15) days of receipt of comments from EPA, incorporate the modifications and resubmit this revised draft Arsenic Compliance Plan to EPA for approval.

25. **Compliance with the SDWA:** Respondent shall implement the approved Arsenic Compliance Plan expeditiously and comply with all milestones, deadlines, and other requirements described in the Plan by December 31, 2021. Respondents also shall provide drinking water from the System to all of its customers that meets the arsenic MCL RAA by December 31, 2022.

26. **Continuous Compliance with the Arsenic MCL:** Following Respondent's initial compliance with the arsenic MCL, Respondent shall maintain continuous compliance with the arsenic MCL for all water the System serves to its customers for human consumption.

27. **Sampling and Analysis:** Respondent shall demonstrate its continuous compliance with the arsenic MCL Order by having its drinking water samples analyzed by an EPA-certified laboratory in accordance with 40 C.F.R. § 141.28.

28. **Increased Sampling and Analysis:** Respondent shall comply with any additional and/or more frequent arsenic sampling and analysis requirements determined necessary by EPA following written notice by EPA of any such requirements in accordance with 40 C.F.R. § 141.23(g).

29. **Reporting of the Sample Results:** Respondent shall ensure the results of all its monitoring, including laboratory analysis including and any additional samples not required by this Consent Order, are submitted to EPA either within ten (10) days of receipt of the results from the laboratory or within ten (10) days following the end of the required monitoring period, whichever is sooner.

30. **Reporting of Public Notification and Certification Form:** Respondent shall continue to provide public notice for arsenic every three months as required by and consistent with 40 CFR 141.203(b) and 141.205. Not less than 45 days prior to issuing the first two such notices after the Effective Date of this Consent Order. Respondent shall submit the proposed draft public notices to EPA for review and approval. Within 15 business days of receipt of the draft notice, EPA shall notify Respondent that EPA has either approved the draft public notice or approved the draft public notice subject to specified changes that Respondent shall make to the notice prior to issuing it. The format and content of subsequent public notices shall conform to the notices approved by EPA. Within 10 days of completing each public notice required by 40 CFR 141.31(d) and 141.201(c)(3), Respondent shall submit to EPA and SWRCB a copy of the public notice and a certification statement that all public notice requirements have been met.

31. **Quarterly Progress Reports:** Respondent must submit written reports to EPA that describe Respondent's progress in implementing its Compliance Plan during the previous quarter. The first Quarterly Progress Report is due by September 20, 2019. The second Quarterly Progress Report is due November 25, 2019. Subsequent reports are due ten (10) days after the last day of every calendar quarter thereafter, *i.e.*, the third Quarterly Progress Report is due April 10, 2020. Respondent must submit Quarterly Progress Reports until otherwise directed by EPA or the termination of this Order.

32. **Quarterly Meetings:** Respondent must convene quarterly meetings (by teleconference or at a centralized meeting location) and invite the SWRCB and the EPA to discuss among other things the following SDWA compliance measures:

- a. The adequacy of Respondent's compliance with the Consent Order and the approved Arsenic Compliance Plan;

b. Establish any necessary managerial and governance protocols that will assist in Respondent's compliance with the Consent Order and the approved Arsenic Compliance Plan; and

c. How to best promote long-term and efficient drinking water compliance at the System.

The first meeting must be held at a date to be determined by Respondent in September of 2019.

Invitations to this first meeting must be provided at least fifteen (15) days in advance. Subsequent meetings must be convened before the last week of the last month of every quarter thereafter.

Respondent agrees to work around any calendar conflicts identified by agency staff in setting dates for the meetings.

33. **Delays:** If any event occurs that causes or is likely to cause delay in the achievement of any requirement or time frame specified in this Consent Order, Respondent shall notify EPA in writing, within ten (10) business days of learning of such event, of the anticipated length and cause of the delay, whether the delay constitutes a *force majeure* event, as defined in Paragraph 36, the measures Respondent has taken and/or will take to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures and achieve the requirement or meet the time frame. Respondent shall adopt all reasonable measures to avoid or minimize delay. Submittal of the notice to EPA required by this paragraph does not extend any deadline or time frame in this Consent Order.

34. If, upon receiving the notice required under Paragraph 33, EPA agrees that the delay or anticipated delay in compliance with this Consent Order has been or will be caused by circumstances that constitute a *force majeure* event as defined in Paragraph 36, the compliance date may be extended for a period of time no longer than the delay resulting from the circumstances causing the delay. In such event, the EPA Enforcement and Compliance Assurance Division may grant an extension of time.

35. Respondent has the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay

was or will be warranted under the circumstances, that Respondents has exercised or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

36. “*Force majeure*,” for purposes of this Consent Order, is defined as any event arising from causes beyond Respondent’s control, or of any entity controlled by Respondent, or of Respondent’s contractors, which delays or prevents the performance of any obligation under this Consent Order despite Respondent’s reasonable best efforts to fulfill the obligation. The requirement that Respondent-exercise “reasonable best efforts to fulfill the obligation” includes using reasonable best efforts to anticipate any potential *force majeure* event and reasonable best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Examples of events that are not *force majeure* events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order, failure to diligently pursue funding source(s) including federal and state funding sources, for work to be performed under this Consent Order, or normal inclement weather.

37. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Order has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision and any delays will not be excused.

38. **Additional Information:** Respondent shall submit to EPA such additional documents and information as EPA may reasonably request to determine Respondent’s compliance with this Consent Order.

39. All submittals to EPA made pursuant to this Consent Order must be accompanied by the following certification signed by Respondent’s representative:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person(s) who managed the system, or of person(s) directly responsible for

gathering the information, I certify that the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

40. Respondent must submit all information required under this Consent Order to:

Everett Pringle, Enforcement Officer Enforcement Compliance & Assurance Division U.S. Environmental Protection Agency – Region IX 75 Hawthorne Street (ENF-3-3) San Francisco, CA 94105 Phone: (415) 972-3548 Fax: (415) 947-3591 E-mail: pringle.everett@epa.gov	Lusi Mkhitarian, REHS, MD, MPH Chief Environmental Health Specialist Department of Public Health/Environmental Health Division Environmental Protection Branch Drinking Water Program 5050 Commerce Drive Baldwin Park, CA 91706 Phone: (626) 430-5420 Fax: (626) 813-3016 E-mail: lmkhitarian@ph.lacounty.gov
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VI. GENERAL PROVISIONS

41. Subject to delays associated with *force majeure* delays, Respondent shall fully implement each item of this Consent Order, including meeting the compliance schedules provided for in the EPA-approved Compliance Plan. Respondent's failure to fully implement all requirements of this Consent Order in the manner and time periods required shall be deemed a violation of this Consent Order and the SDWA.

42. Respondent's failure to comply with all of the applicable requirements of the SDWA and 40 C.F.R. Part 141 may subject it to additional enforcement actions, including but not limited to judicial or administrative actions.

43. This Consent Order constitutes the entire agreement of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Order. This Consent Order, however, will not prohibit, prevent, or otherwise preclude EPA from taking whatever action(s) it deems appropriate to enforce the SDWA in any manner and will not prohibit, prevent, or otherwise preclude EPA from enforcing or using this Consent Order in subsequent administrative proceedings. Nothing in this Consent Order constitutes a waiver, suspension or modification of the requirements of the SDWA,

or the rules and regulations promulgated thereunder, which remain in full force and effect. Issuance of this Consent Order is not an election by EPA to forgo any civil or administrative action otherwise authorized under the law.

44. Violations of any term of this Consent Order may subject Respondent to (i) a civil action brought in the appropriate United States district court to require compliance with the applicable requirements of the SDWA and this Consent Order, pursuant to Section 1414(b) of the SDWA, 42 U.S.C. § 300g-3(b); (ii) a civil judicial penalty of up to \$55,907 per day of violation, as assessed by the appropriate United States district court, pursuant to Sections 1414(g)(3)(A) and (C) of the SDWA, 42 U.S.C. §§ 300g-3(g)(3)(A) and (C), and 40 C.F.R. § 19.4, or (iii) an administrative penalty of up to \$38,954 after notice and opportunity for hearing, pursuant to Sections 1414(g)(3)(A) and (B) of the SDWA, 42 U.S.C. §§ 300g-3(g)(3)(A) and (B).

45. This Consent Order does not relieve Respondent of any responsibilities or liabilities established pursuant to any applicable local, state, or federal law.

46. The provisions of this Consent Order are severable. If any provision of this Consent Order is found to be unenforceable, the remaining provisions will remain in full force and effect.

47. The provisions of this Consent Order are binding upon Respondent and its successors or assigns.

48. Providing false or misleading information may subject Respondent to civil or criminal enforcement, or both.

49. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Order, including any right of judicial review under Section 1448(a) of the SDWA, 42 U.S.C. § 300j-7(a).

50. This Consent Order may be amended or modified by written agreement of EPA and Respondent.

51. Except for any data, reports, records, documents, and information required by this Consent

Order, Respondent may assert business confidentiality claims under 40 C.F.R. Part 2, Subpart B for any other information (in whatever form) provided to EPA or may assert that such information is privileged as recognized by and consistent with federal law.

52. Respondent's undersigned signatory certifies to his or her authority to execute this Consent Order and to legally bind the Respondent to the terms of this Consent Order.


VII. EFFECTIVE DATE AND TERMINATION

53. This Consent Order shall become effective five (5) business days after signature by the EPA and will remain in effect until Respondent demonstrates compliance with the terms and conditions of this Consent Order and are granted termination pursuant to Paragraph 54. Within 5 business days of signing the Consent Order, EPA will provide a copy of the fully executed Consent Order to Respondent.

54. After one year of completing all conditions of this Consent Order, Respondent may request in writing that EPA terminate this Consent Order. Such request shall include a discussion of why termination is appropriate. EPA shall either agree to the request and terminate this Consent Order, or reject the request and provide a written response to Respondent containing EPA's reasons for not terminating the Consent Order. EPA's decision not to terminate the Consent Order shall not foreclose Respondent's opportunity to make additional termination requests at a later date.

IT IS SO AGREED AND ORDERED:

For Respondent Mettler Valley Mutual Water Company:


Rick Horton, Board President
Mettler Valley Mutual Water Company

Date: 8/20/19

For U.S. Environmental Protection Agency – Region IX:



Amy C. Miller, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region IX

Date: 8/23/19